

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of LOUISE SAWYER and U.S. POSTAL SERVICE,
CIVIC CENTER STATION, Kansas City, KS

*Docket No. 98-530; Submitted on the Record;
Issued August 25, 1999*

DECISION and ORDER

Before GEORGE E. RIVERS, BRADLEY T. KNOTT,
A. PETER KANJORSKI

The issue is whether appellant has met her burden of proof to establish that she sustained a lower back injury in the performance of duty on May 23, 1997.

On May 27, 1997 appellant, then a 40-year-old distribution and window clerk, filed a Form CA-1 claim for benefits based on traumatic injury. Appellant claimed that she injured her back while lifting heavy parcels on May 23, 1997.

In support of her claim, appellant submitted an undated accident report, provided by a medical group, which stated that she was injured at work on May 23, 1997 while lifting a parcel weighing approximately 55 to 60 pounds and a May 28, 1997 treatment note from Dr. Paul H. Kurth, Board-certified in internal medicine and an associate from the medical group, who stated that appellant was seen in his office on May 27, 1997. The record also contains an employee duty status evaluation dated May 27, 1997, which indicated that appellant sustained a lumbar sprain, that she was unable to perform her regular work but could perform light work and restricted appellant from lifting more than 20 pounds.

The employing establishment controverted the claim on the grounds that appellant did not report an injury until four days after she alleged it had occurred. The employing establishment, therefore, contended that appellant failed to provide sufficient evidence to establish that she had sustained an injury in the performance of duty.

By letter dated June 18, 1997, the Office of Workers' Compensation Programs requested that appellant submit additional information in support of her claim, including a medical report from a physician indicating how the reported work incident caused the claimed injury. The Office further requested that appellant describe in detail how the injury occurred, whether she had been injured between May 23 and May 27, 1997, why she delayed seeking medical treatment for her alleged employment injury and to provide the names and addresses of persons

who witnessed the alleged incident. The Office informed the employee that she had 30 days to submit the requested information.

In response to the Office's request, appellant submitted a June 25, 1997 letter, in which she asserted that she delayed seeking medical treatment because the injury occurred on Friday, May 23, 1997, followed by off days on Saturday, Sunday and Monday, which was a holiday. Appellant alleged that she remained in bed for the entire three-day weekend due to her employment-related back pain and that she reported the employment incident/injury as soon as she reported to work on Tuesday, May 27, 1997. She stated that she contacted her treating physician and scheduled an appointment on the same day and that her physician treated her for a lumbar sprain as indicated on the Form CA-1. Appellant also submitted a June 25, 1997 statement from a coworker who stated that she was handling oblong, heavy boxes which weighed between 40 and 60 pounds and that she had asked appellant for assistance in performing this task.

The employing establishment submitted a June 19, 1997 letter from its human resources specialist, who stated that she had attached witness statements to support its controversion of appellant's claim. She also stated that appellant told her that her doctor who had placed her on a permanent lifting restriction and that she had informed appellant that there was no medical report or documentation in the record to support anything other than a lumbar sprain. She further stated that appellant seemed unwilling to provide any further information. The employing establishment also submitted a June 6, 1997 statement from the acting manager on duty May 23, 1997, who stated that during the course of the day he did not notice appellant having any difficulties with her back and that she did not report any injury on that date and an undated statement from appellant's floor supervisor on May 23, 1997, who stated that appellant did not report that she had sustained an injury on May 23, 1997 until May 27, 1997.

By decision dated July 22, 1997, the Office found that appellant failed to submit sufficient evidence to support her claim that she sustained an injury in the performance of duty on May 23, 1997.

By letter dated August 13, 1997, appellant requested a review of the written record. Accompanying the request was a Form CA-20 dated July 22, 1997 from Dr. Kurth. In the section of the form indicating "history of injury," Dr. Kurth stated, "five-day history of back pain, after lifting a number of parcels at the [employing establishment] weighing 55 to 65 lbs." He found that she had a mild restriction of lumbar flexion, with no motor weakness or sensory loss and moderate tenderness of the lower lumbosacral spine with questionable paravertebral spasm. Dr. Kurth diagnosed a lower back sprain, placed appellant on disability as of May 27, 1997 and checked a box indicating that he believed the condition found was caused or aggravated by an employment activity. Dr. Kurth also reiterated the 20-pound lifting restriction.

By decision dated October 31, 1997, the Office affirmed its previous decision, finding that appellant failed to submit evidence sufficient to warrant modification.

The Board finds that appellant has not met her burden of proof to establish that she sustained a lower back injury in the performance of duty on May 23, 1997.

An employee seeking benefits under the Federal Employees' Compensation Act¹ has the burden of establishing that the essential elements of his or her claim including the fact that the individual is an "employee of the United States" within the meaning of the Act, that the claim was timely filed within the applicable time limitation period of the Act, that an injury was sustained in the performance of duty as alleged and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.² These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.³

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it must first be determined whether a "fact of injury" has been established. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time, place and in the manner alleged.⁴ Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury.⁵ The medical evidence required to establish causal relationship is usually rationalized medical evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.⁶

The Board finds that the Office erred in finding that appellant did not establish that she sustained a back injury on May 23, 1997. An injury does not have to be confirmed by eyewitnesses in order to establish the fact that an employee sustained an injury in the performance of duty, as alleged, but the employee's statements must be consistent with surrounding facts and circumstances and his or her subsequent course of action. Such circumstances as late notification of injury, lack of confirmation of injury, continuing to work without apparent difficulty following the alleged injury and failure to obtain medical treatment may cast doubt on an employee's statements in determining whether he or she has established a *prima facie* case.⁷ The employee has the burden of establishing the occurrence of the alleged injury at the time, place and in the manner alleged, by a preponderance of the reliable, probative and substantial evidence. An employee has not met this burden when there are such

¹ 5 U.S.C. § 8101 *et seq.*

² *Joe Cameron*, 42 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

³ *Victor J. Woodhams*, 41 ECAB 345 (1989).

⁴ *John J. Carlone*, 41 ECAB 354 (1989).

⁵ *Id.* For a definition of the term "injury," see 20 C.F.R. §10.5(a)(14).

⁶ *Id.*

⁷ *Merton J. Sills*, 39 ECAB 572 (1988).

inconsistencies in the evidence as to cast doubt upon the validity of the claim; however, her statement alleging that an injury occurred at a given time and manner is of great probative value and will stand unless refuted by substantial evidence.⁸

In the instant case, the Form CA-1 appellant submitted on May 27, 1997 indicates that appellant suffered a lower back strain on May 23, 1997 while lifting heavy parcels. This is usually sufficient to establish fact of injury; *i.e.*, that the specific event or incident occurred at the time, place and in the manner alleged and that the employment incident caused a personal injury. Moreover, the assertions appellant made in her June 25, 1997 letter that she delayed seeking medical treatment because the injury occurred on Friday, May 23, 1997, followed by a three-day, holiday weekend and that she reported the employment incident/injury and sought treatment from her treating physician on the following Tuesday, May 27, 1997 were consistent with surrounding facts and circumstances and her subsequent course of action. In addition, the July 22, 1997 Form CA-20 indicates that, according to Dr. Kurth, appellant suffered a lower back strain on May 23, 1997 while lifting parcels weighing 55 to 60 pounds and that Dr. Kurth placed restrictions on some of appellant's physical activities and placed her on disability as of May 27, 1997. Further, Dr. Kurth indicated that appellant's pain symptoms corresponded with the history of injury appellant provided him. Taken together, this factual medical evidence, which is unrefuted, is sufficient to establish fact of injury; *i.e.*, that the specific event or incident occurred at the time, place and in the manner alleged.

The Board, however, affirms the Office's rejection of appellant's claim that the May 23, 1997 employment incident resulted in a personal injury or disability. The question of whether an employment incident caused a personal injury generally can be established only by medical evidence⁹ and appellant has not submitted a rationalized, probative medical opinion from a physician in support of her claim that she sustained a lower back injury on May 23, 1997 causally related to her employment.

In the present case, the only medical evidence bearing on causal relationship is the May 27, 1997 duty status evaluation, May 28, 1997 treatment note and July 22, 1997 Form CA-20 from Dr. Kurth. These notes and reports described appellant's account of injury and related that appellant had sustained a lower back injury on May 23, 1997, but did not contain a rationalized, probative medical opinion sufficient to establish that appellant sustained an injury or disability on April 14, 1995 causally related to employment factors.¹⁰ Causal relationship must be established by rationalized medical opinion evidence, appellant failed to submit such evidence in the present case. Appellant did not provide a medical opinion which describes or explains the medical process through which the May 23, 1997 work accident caused the claimed injuries. Thus, the Office's decision is affirmed.

⁸ *Carmen Dickerson*, 36 ECAB 409 (1985).

⁹ *See John J. Carlone*, *supra* note 4.

¹⁰ The CA-20 form report from Dr. Kurth that supports causal relationship with a checkmark is insufficient to establish the claim, as the Board has held that without further explanation or rationale, a checked box is not sufficient to establish causation. *Debra S. King*, 44 ECAB 203 (1992); *Salvatore Dante Roscello*, 31 ECAB 247 (1979).

The decisions of the Office of Workers' Compensation Programs dated October 31 and July 22, 1997 are hereby affirmed as modified.

Dated, Washington, D.C.
August 25, 1999

George E. Rivers
Member

Bradley T. Knott
Alternate Member

A. Peter Kanjorski
Alternate Member